



# STATE OF NEW HAMPSHIRE BOARD OF MEDICINE NEWSLETTER

WINTER 2011

## ***Board Welcomes New Members***

In September 2009, the New Hampshire legislature passed legislation that revised the membership of the Board of Medicine. As a result of this change, the Board now includes a Doctor of Osteopathy as one of its members and the total number of members increased to eleven (11). As a result of this change in the law, the Board welcomed John H. Wheeler, D.O. as a member in May 2010. Dr. Wheeler of Bow, NH practices in Derry, NH.

Nick P. Perencevich, M.D., joined the Board in October 2009, after Dr. James Sise, a surgeon from Keene, N.H. resigned his position. Dr. Sise had served on both the Medical Review Subcommittee and the Board, and at the time of his resignation was the Board's President. Dr. Perencevich, of Concord, N.H. was a long-time member of the Board's Medical Review Subcommittee before becoming a Board member. Dr. Perencevich, a surgeon from Concord, NH currently practices at the VA Hospital in Manchester, NH.

Attorney Edmund J. Waters, Jr. joined the Board in June 2010 as its newest public member, replacing Attorney Brian Stern of Dover, NH. Mr. Waters resides in Contoocook, NH and practices law in Concord, NH.

In addition to these three new Board members, the Medical Review Subcommittee of the Board of Medicine is also in the process of gaining some new members. Four members should be confirmed by the Governor and Executive Council shortly and will be joining the committee in the coming months. Details about these new members will be described in the next newsletter.

### ***Current Board Members:***

***Dr. Robert J. Andelman, Board President; Dr. Amy Feitelson, Board Vice President; Dr. Robert Cervenka; Dr. Robert M. Vidaver; Dr. Louis Rosenthal; Dr. Nick P. Perencevich; Dr. John H. Wheeler; Mark Sullivan, P.A.; Gail Barba, Public Member; Rev. Daniel W. Morrissey, O.P., Public Member; Edmund J. Waters, Esq., Public Member.***

## ***Board Hires New Executive Director***

The Board recently hired Kathryn M. Bradley as its first Executive Director. Ms. Bradley, an attorney, has worked with the Board previously, acting as its Board counsel while she was an Attorney at the NH Attorney General's Office. Ms. Bradley counseled numerous professional licensing boards while working at the AG's office, and also represented various state agencies while an Assistant Attorney General from 1993-2001. Ms. Bradley returns to state government after a brief time as an attorney in private practice. She looks forward to working with the Board and its staff in implementing practices to improve the overall functioning of the Board.

## ***Changes to the Medical Practice Act***

There have been several revisions to the Medical Practice Act – RSA 329 – that governs the Board of Medicine. Included in the revisions to the law are the following:

A Doctor of Osteopathic Medicine was added as a member to the Board. The addition of the D.O. member brings the total number of Board members to eleven (11), including three public members.

Another change requires that all licensees shall provide the Board with a copy of any notice of complaint, action for medical injury, or claim received from or disciplinary action taken in a jurisdiction outside of this state within 30 days of receipt of such action.

The law governing certain criteria by which the Board can take disciplinary action replaced the term “pattern of behavior” with “medical practice” so that a licensee could be subject to disciplinary action if he “has displayed medical practice which is incompatible with the basic knowledge and competence expected of persons licensed to practice medicine or any particular aspect or specialty thereof”. This change provides for regulating a single act of practice of medicine if and only if it meets the criteria of the statute.

The law on reporting to the Board reservable claims was clarified. Now the law requires reporting to the Board reservable claims coincident with medical injury that take place in this state or any state within 30 days after establishing the reserve. A reservable claim, as adopted by the Board on January 7, 2009, means if an insurer has opened a file of any sort and has established a reserve, with regard to medical injury, then it is required to report to the Board. Such reporting is not dependent upon a written demand, specific dollar amount, or an individual licensee being identified in a claim.

Finally, the Board now has the authority to dismiss complaints that are determined to be unfounded. An unfounded complaint is one that does not fall within the jurisdiction of the Board, does not relate to the actions of the licensee, or is determined by the Board to be frivolous. The law allows the Board to destroy all information collected during the course of an investigation after 3 years.

***FYI: The law governing the Board of Medicine is found at RSA 329 and is known as the Medical Practice Act. The Board is also governed by administrative rules that guide the application of the RSA. The full text of the laws and rules can be found at the Board’s website at [www.nh.gov/medicine/laws](http://www.nh.gov/medicine/laws). The Board is revising some of its administrative rules and highlights of these changes will appear in the next newsletter.***

## ***SPOTLIGHT: Board President Bob Andelman***

Board President Bob Andelman talks about his time on the Board, goals for the coming year and where the Board is headed:

When I was appointed to the Board in January 2007, I had no idea of what the Board did other than to grant licenses. The learning curve was steep, and I found that there was a fine line between the Board’s primary job of protecting the public while at the same time being fair and impartial to licensees.

The Board investigates all complaints from patients and family members, in addition to all lawsuits and claims. Though situations range from “(s)he said, - (s)he said” in a brief office interaction, to catastrophic medical complications, in all cases I try to envision two scenarios: what if that patient were I or my wife or child who was injured? And, as a physician, “there but for the grace of God ... go I”.

My job in the coming year is to lead the Board through some tumultuous times which include working within the confines of significant budgetary cutbacks, responding to the Legislative Audit, supporting the Professional’s Health Program, and dealing with an increasing level of complaints and suits. Through it all, most importantly, I strive to maintain the fine balance of protecting the public, and remaining empathetic to the physicians in the trenches who are trying to do the best for their patients.

***From July 1, 2009 through June 30, 2010, the Board received a total of 504 complaints, writs or other referrals of information that resulted in a Board investigation. Twenty (20) licensees were disciplined during the same time period.***

***A reminder that pursuant to RSA 329:16-f, I, all licensees must maintain a current business address on file with the Board. Any changes in your address shall be reported to the Board within 30 days from the date of the change. Changes can be sent to [nichole.taylor@nhsa.state.nh.us](mailto:nichole.taylor@nhsa.state.nh.us).***

## ***Suggestions for Patient Care Improvement: Diverticulosis vs. Diverticulitis***

Reviewing stories of provider/patient interactions is the core of what the Board and Medical Review Subcommittee does, and at times lessons arise from these stories. The following is one such story (names and locations withheld) described by Dr. Perencevich. In these stories, the Board makes suggestions for improved patient communication and safety. Other stories can be found on the Board's website. The Board also welcomes from you suggestions on patient care improvement.

The Board recently reviewed a claim against a gastroenterologist that highlighted a common misunderstanding that patients have about diverticulosis vs. diverticulitis and how we, as physicians, might communicate better with our patients.

The patient had a screening colonoscopy and diverticulosis was seen. He was sent home with printed discharge instructions with diverticulosis checked off as a finding. The patient claims he was not told about this at his discharge or at a later time. The gastroenterologist states that he was recovering from sedation at the discharge and this was not a good time for the patient to remember any discussion. The patient did not admit to seeing diverticulosis on the discharge instructions.

Seven months later, the patient was admitted with acute diverticulitis and felt that he could have avoided the episode if he had been informed that he had diverticulosis on the colonoscopy months before by taking a specialized diet. He wanted monetary compensation for his time and bills.

The Board thought that it was good that the patient's printed discharge instructions stated that diverticulosis was seen. However, the Board also thought the gastroenterologist could have done more to explain the condition by doing one of two things. One was to give the patient printed educational materials on the condition and what may or may not have prevented subsequent diverticulitis, along with a call back number to answer any questions. Two, a phone call to the patient ideally at some time after the sedation was

gone to explain the condition would also have been equally effective. Documenting this post-procedure interaction in the record is also recommended.

***Have any suggestions on patient care improvements like the one featured in this newsletter? Have any ideas, suggestions or comments about the newsletter, email them to [kathryn.bradley@nh.gov](mailto:kathryn.bradley@nh.gov).***

***The Medical Review Subcommittee needs assistance from time to time in its review of the standard of care in its investigations of licensees. The work involved includes a complete review of medical records and the writing of an expert report on your findings. If you are interested in considering this opportunity (CME Category 2 credit is also available for the work), contact Dr. Douglas Black at (603)271-0570.***

***Does the Board of Medicine have your current e-mail address? If not, please provide it to [nichole.taylor@nhsa.state.nh.us](mailto:nichole.taylor@nhsa.state.nh.us).***

## ***Recent Disciplinary Action Taken by the Board***

The following are the public disciplinary actions that were taken by the Board of Medicine between July 1, 2010 and January 31, 2011.

7/7/10 **Karen M. Calegari, D.O.** sold prescription – strength medications through a website without a valid physician-patient relationship. The Board approved a settlement agreement in which Dr. Calegari was reprimanded and assessed an administrative fine of \$1,000.00.

7/7/10 **Kevin R. Costin, P.A.** wrote six prescriptions for a person without establishing a valid physician-patient relationship, without authorization from the patient's treating physician or his own supervising physician and without noting five of the prescriptions on the medical chart. The Board approved a settlement agreement in which Mr. Costin was reprimanded, required to complete 15 hours of CME in the area of professional boundaries and documentation and assessed an administrative fine of \$3,000.00.

7/7/10 **Bruce D. Latham, D.O.** failed to adequately document the rationale underlying his decision-making related to diagnostic testing and therapeutic treatment on four patients. The Board approved a settlement agreement in which Dr. Latham was reprimanded, required to participate in an 8-hour CPEP Patient Care Documentation Seminar and required to participate in an assessment of his medical skills at the University of New England, College of Osteopathic Medicine and provide the Board with documentation of completion of any recommendations made by the assessment.

9/1/10 **Michelle F. Lackovic, M.D.** treated chronic pain patients for an internet-based health company, and relied on them to maintain and/or retain treatment records. The internet-based health company is now defunct and Dr. Lackovic is unable to maintain and/or retain treatment records. The Board approved a settlement agreement in which Dr. Lackovic is required to complete the Case Western Reserve School of Medicine course on controlled substance management or its equivalent, and is assessed an administrative fine of \$3,000.00.

9/1/10 **Susan M. Hare, M.D.** engaged in professional misconduct relating to her treatment of pain management patients. Dr. Hare's patient treatment files for those treated for chronic pain and pain management revealed a pattern that was incompatible with the basic knowledge and competence expected of a physician. Dr. Hare's conduct constituted inadequate record keeping and she engaged in inadequate supervision of her licensed practical nurse. The Board approved a settlement agreement in which Dr. Hare's license to practice medicine was suspended for five years. Dr. Hare was indefinitely restricted from prescribing schedule II and III narcotics. Dr. Hare was permanently restricted from treating chronic pain patients and shall not employ a nurse practitioner or physician assistant who prescribes schedule II and III narcotics. Dr. Hare shall complete the University of California, San Diego, School of Medicine PACE program course on physician prescribing practices or the Case Western Reserve School of Medicine continuing education course on controlled substance management within twelve months. Dr. Hare must complete an additional 24 CMEs in the area of documentation of medical records, documentation of prescribing practices and boundaries for professionals treating colleagues or office personnel. Dr. Hare was assessed an administrative fine of \$5,000.00.

9/1/10 **James W. Olswang, M.D.** misdiagnosed a case of acute angle closure glaucoma during an ER evaluation of a patient. The Board approved a settlement agreement in which Dr. Olswang was reprimanded and required to complete an additional 8 hours of CME in the areas of documentation and ophthalmic emergency medicine. Dr. Olswang was assessed an administrative fine of \$2,000.00.

11/3/10 **Randy K. Hawkins, M.D.** provided anesthesia to a nurse that he worked with on a regular basis during a scheduled C-section. Within months, Dr. Hawkins became intimately involved with the nurse. Dr. Hawkins responded untruthfully to questions about this relationship to the Board's investigator, to the NHPHP and to the Acumen Institute. The Board approved a settlement agreement in which Dr. Hawkins was reprimanded and required to complete an additional 24 hours of

CME in the area of professional boundaries. Dr. Hawkins was required to participate in the NHPHP and was assessed an administrative fine of \$10,000.00.

12/1/10 **Kenneth J. Koval, M.D.** on several occasions, provided medications, including controlled substances, to two women with whom he had personal relationships but with whom he did not have valid physician-patient relationships. The Board approved a settlement agreement in which Dr. Koval was reprimanded and required to complete an additional 24 hours of CME in the pre-approved program entitled: "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls of Misprescribing." Dr. Koval was assessed an administrative fine of \$2,000.00.

#### NH Board of Medicine Mission Statement

To protect the public from the unprofessional, incompetent, or impaired practice of medicine.

The Board of Medicine issues licenses to qualified Allopathic and Osteopathic physicians and physician assistants based on recognized credentialing standards. The Board regulates the minimum standards of professional conduct and continued competence and takes disciplinary action against licensees who fail to meet these standards.

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